IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

OP.No. 10284 of 1996(Y)

PETITIONER:

M.A.ALI, S/O.IYDROS, AGED 55 YEARS ,
WORKING AS PUMP OPERATOR, K.S.R.T.C, VAIKOM.

BY ADV. SRI.N.UNNIKRISHNAN
SRI.M.C.MADHAVAN.

RESPONDENTS:
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1. THE STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT, SECRETARIAT, THIRUVANANATHAPURAN.

2. THE KERALA STATE ROAD TRANSPORT CORPORATION REPRESENTED BY THE SECRETARY, TRANSPORT BHAVAN, FORT, THIRUVANANATHAPURAN.

3. THE MANAGING DIRECTOR, K.S.R.T.C., TRANSPORT BHAVAN, FORT, THIRUVANANATHAPURAN.

4. THE EXECUTIVE DIRECTOR (VIGILANCE & STATISTICS) K.S.R.T.C, TRANSPORT BHAVAN, FORT, THIRUVANANATHAPURAN.

5. THE ASSISTANT TRANSPORT OFFICER, K.S.R.T.C., VAIKOM.

BY ADV. SRI.JOHN P.JOHN (SC FOR KSRTC)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.17684 OF 1996 IN OP NO.10284 OF 1996 Y

//DISMISSED//

29.5.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF MEMO NO.PL1-2627/95/VKM DATED 19.12.1995 ISSUED BY THE 5TH RESPONDENT.

EXT.P2: TRUE COPY OF AN EXTRACT OF AUDIT REMARKS AND OBJECTIONS OBTAINED BY THE PETITIONER.

EXT.P3: TRUE COPY OF APPEAL DATED 15.1.1996 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P4: TRUE COPY OF JUDGMENT IN O.P.NO.1441/96 DATED 24.1.1996 PASSED BY THE HON'BLE HIGH COURT OF KEALA.

EXT.P5: TRUE COPY OF APPELLATE ORDER NO.D.DIS.002113/APL2 DATED 4.6.1996 PASSED BY THE 3RD RESPONDENT.

EXT.P6: TRUE COPY OF C.O.MEMO NO.PLA5/83937/87 DATED 4.6.1988 ISSUED BY THE 3RD RESPONDENT.

EXT.P7: TRUE COPY OF ORDER NO.PL1/2627/95/VKM DATED 14.6.1996 ISSUED BY THE 5TH RESPONSENT.

RESPONDENT'S EXHIBITS:

EXT.R2(a): TRUE COPY OF THE C.O.ORDER NO.PLA 10/83937/87 DT.4.6.1988.

EXT.R2(b): TRUE COPY OF THE NOTE DT.7.3.1996.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J

O.P.No.10284 OF 1996

Dated this the 29th day of May, 2007

JUDGMENT

The petitioner was a Last Grade Servant in the service of the K.S.R.T.C. He entered service prior to 31.3.1971 and in 6/1986, he had reached the scale of Rs.640-1120 in the 1984 scales. As per Ext.P6 [Ext.R2(a)] circular, those Last Grade Employees who were appointed prior to 31.3.1971 and promoted to the scale of Rs.640-1120 in the 1984 scales prior to 1.6.1988 are allowed to continue in that scale up to 60 years of age and those who do not satisfy these two conditions have to retire at the age of 55 years. Such Last Grade Employees who are eligible to continue till 60 years of age on the strength of that circular, however, would be eligible to draw only on the basis of the 1990 scale revision and would not be entitled to any further promotion from that scale. Therefore, the choice was between one being permitted to continue till 60 years of age with the pay being pegged in the 1990 scale or one having to retire at the age of 55 years after enjoying all promotions and higher grades until such retirement.

2. The petitioner, who was entitled to continue till 60 years of age in terms of the aforesaid circular, was erroneously granted a further grade promotion with effect from 1.1.1991. Had he enjoyed it or wanted to enjoy it, he had to retire at 55 years of age. But the fact remains that after the institution of this writ petition, whether he exercised any option or not, he voluntarily continued to serve and retired at the age of 60 years. This means that he was not entitled to any grade promotion with effect from 1.1.1991, since, going by the aforesaid circular, he could continue till the age of 60 years only if he continues to draw at the 1990 scale. If he were to enjoy the higher grades, he ought to have retired at the age of 55.

3. Having regard to what is aforesaid, the petitioner's complaint against the audit objection, which form part of Ext.P1 order for recovery of excess pay drawn, is unsustainable. The audit objection is that the petitioner was not entitled to a grade promotion with effect from 1.1.1991 since he had already reached the scale of Rs.640-1120 before 1.6.1988 and was

continuing till the age of 60 years and was therefore, entitled only to the 1990 scale. The audit objection and the resultant conclusion that the petitioner had overdrawn salary is proper.

4. In an earlier round of litigation before this Court, the petitioner's contention that he was not heard was upheld and was relegated to be heard, by the Managing Director of the Corporation, on his appeal against the decision to recover the allegedly excess drawn pay. The appellate order is the foundation for this writ petition. Following the appellate order, he also faced an order for immediate recovery of the excess pay drawn.

5. By order dated 28.6.1996 on C.M.P.No.17684/06, this Court had granted interim stay of recovery of any amount from the petitioner on the strength of the impugned Exts.P1 and P7. Thereafter the petitioner retired on 30.8.2001. Having noticed that the order for recovery is legally justified, the issue that arises for consideration would confine to whether ends of justice

would permit the recovery to be made. The petitioner was a Last Grade Employee. The benefit of the 1991 scale which has come to him from 1.1.1991 had led him drawing an excess amount of Rs.20,615/- in total. Ext.P1 order for recovery is issued in December, 1995. Even if I were to take it that the petitioner is liable to return that amount, even though he obtained it without any wrongful act on his part, at this distance of time, particularly because the recovery stood stayed for a fairly long period and the initial order of recovery was itself after nearly four years after the petitioner, a Last Grade Employee, had commenced enjoying the fruit of an erroneous fixation, I am not inclined to take the view that ends of justice require that the petitioner be compelled to return the amounts so overdrawn. However, his re-fixation of the last pay shall have to be on the basis of Ext.P1 revision of pay.

For the foregoing reasons, this writ petition is allowed in part quashing Ext.P1 and the audit objection accompanying it to the extent it results in ordering recovery of the excess paid

amounts from the petitioner. The recovery ordered as per Ext.P1 is quashed. It is clarified that this judgment does not affect the re-fixation of pay of the petitioner for all further purposes including retiral benefits. However, if any retiral benefits have already been released on the basis of fixation of retiral benefits de hors Ext.P1, there shall be no recovery of any retiral benefits excessively paid. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.10284 OF 1996

JUDGMENT

29th MAY, 2007.

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